

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALVIN WASHINGTON,	:	
Plaintiff	:	
v.	:	Case No. 3:20-cv-180-KRG-KAP
CORRECTIONS OFFICER BREGMAN,	:	
Defendant	:	

Memorandum Order

Plaintiff, an inmate at S.C.I. Houtzdale, submitted a complaint subject to the Prison Litigation Reform Act in September 2020 complaining about events at Houtzdale in September 2018 and thereafter. I screened the complaint in March 2021 and found a viable claim against defendant Bregman, and I recommended dismissal for failure to state a claim as to four defendants without leave to amend, and with leave to amend in part as to defendant McClellan. ECF no. 5. Plaintiff did not object and filed the operative First Amended Complaint in July 2021 at ECF no. 8. It named only the two defendants, Bregman and McClellan, as to whom I had found viable or potentially viable claims.

I screened the amended complaint in August 2021, recommending that it be served only on defendant Bregman, with no further leave to amend. ECF no. 10. In August 2022, the Court overruled plaintiff's objections, adopted the recommendation dismissing the First Amended Complaint as to defendant McClellan, and ordered the First Amended Complaint served on defendant Bregman. ECF no. 21. Plaintiff failed to move the matter forward by sending the Clerk a copy of the amended complaint and forms for service on defendant Bregman, and in January 2023 I recommended that if plaintiff did not act promptly the matter be dismissed. ECF no. 23.

Plaintiff did not object, and he returned service papers in February 2023. What plaintiff sent (and apparently what was served), however, was not the First Amended Complaint at ECF no. 8, but what he styled as a Second Amended Complaint. *See* ECF no. 24. As the above history indicates, plaintiff was not given leave to file a Second Amended Complaint, nor did he move for leave to do so.

As plaintiff recognizes in the Second Amended Complaint, the action proceeds only against defendant Bregman. To the extent that dismissed defendants are mentioned in the Second Amended Complaint, that pleading does not revive or suffice to propose to revive any claims against those dismissed defendants, especially those dismissed without objection, who were not named as defendants in the First Amended Complaint, and as to whom the limitations period expired long ago. Given the liberality with which *pro se* litigants must be treated, I will not strike the Second Amended Complaint. The allegations

against defendant Bregman in both versions are in narratives that go on for several unnumbered paragraphs, and they are substantially consistent. But to clarify the defendant's obligation, the answer or other pleading should be directed to the First Amended Complaint at ECF no. 8.



DATE: March 28, 2023

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel and by U.S. Mail to:

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